

*S and J*

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

DIEGO J. HERBSTEIN,

Plaintiff,

-against-

EDUARDO HERBSTEIN and  
 GUILLERMO HERBSTEIN,

Defendants.

Civil Action No.:  
 08 CV 0528 (LBS)

**NOTICE OF VOLUNTARY  
DISMISSAL BY PLAINTIFF**

Plaintiff Diego J. Herbstein, by his attorneys DePetris & Bachrach, LLP, hereby files a notice of voluntary dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

1. The complaint in this action was filed on January 22, 2008. As of this date, the summons and complaint have not been served on defendants Eduardo Herbstein and Guillermo Herbstein, who reside in Argentina.
2. As more particularly set forth in the complaint, the gravamen of this action is that defendants engaged in a scheme to defraud and to obtain money and property from plaintiff by means of a fraudulent claim (that Diego J. Herbstein had never made any payments on the real estate investment made by their father David Herbstein) and the fraudulent conduct of litigation in a civil action brought by Eduardo Herbstein and Guillermo Herbstein against Diego J. Herbstein in the Supreme Court of the State of New York, County of New York. As stated in

*So ordered  
 J. Sand  
 USM  
 3/26/08*

paragraph 42 of the complaint, a trial on damages in the state court action was scheduled to begin on January 22, 2008.

3. On January 23, 2008, at the conclusion of the cross-examination of Eduardo Herbstein by counsel for Diego Herbstein, the trial on damages abruptly ended. Plaintiffs in the state court action (Eduardo Herbstein and Guillermo Herbstein) decided not to pursue the claim that Diego J. Herbstein had never made any payments on the real estate investment at issue and owed them several hundred thousand dollars plus interest. The state action was settled for the sum of \$45,000. The terms of the settlement were entered on the record in the state court action. Subsequent thereto, the parties have exchanged releases and payment has been made of the sum of \$45,000.

4. Accordingly, this federal action is being dismissed by plaintiff Diego J. Herbstein by the filing of this notice – prior to the service of the summons and complaint on defendants – pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Dated: New York, New York  
March 19, 2008

Ronald E. DePetris  
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